



January 19, 2018

VIA CERTIFIED MAIL RETURN RECEIPT REQUESTED

JAN 24 2018

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**RE: NOTICE OF VIOLATIONS AND INTENT TO FILE SUIT UNDER THE FEDERAL
WATER POLLUTION CONTROL ACT ("CLEAN WATER ACT") (33 U.S.C. §§
1251 et seq.)**

Dear Mr. Reed and Mr. Case,

This firm represents San Joaquin Raptor/Wildlife Rescue Center and Protect Our Water ("SJR/WRC & POW"), a California non-profit corporation and a California non-profit association respectively, in regard to violations of the Clean Water Act ("CWA" or "the Act") occurring at 7/11 Materials Inc. concrete and aggregate manufacturing facility located at 2714 Stagecoach Rd., Stockton, CA 95215 (the "Facility") with Waste Discharger Identification Number WDID 5S39I018568. This letter is being sent to you as the responsible owners, officers, and/or operators of the Facility. Unless otherwise noted, 7/11 Materials Inc. shall hereinafter be referred to as "7/11 Materials," and Jeffrey Reed, Steve Case, Basic Resources, Inc., and The Reed Leasing Group LLC shall collectively be referred to as the "Owners/Operators." SJR/WRC & POW are dedicated to the preservation, protection, and defense of the environment, wildlife, and natural resources throughout the state of California, with special emphasis on the central valley including the San Joaquin River and the greater Sacramento-San Joaquin Delta.

7/11 Materials is in ongoing violation of the substantive and procedural requirements of the CWA, 33 U.S.C. § 1251 *et seq.*; and California's General Industrial Storm Water Permit, National Pollution Discharge Elimination System ("NPDES") General Permit No. CAS000001 ("General Permit"), Water Quality Order No. 97-03-DWQ ("1997 General Permit"), as superseded by Order No. 2015-0057-DWQ ("2015 General Permit").¹

The 1997 General Permit was in effect between 1997 and June 30, 2015, and the 2015 General Permit went into effect on July 1, 2015. As will be explained below, the 2015 General Permit includes many of the same fundamental requirements, and implements many of the same statutory requirements, as the 1997 General Permit. Violations of the General Permit constitute ongoing violations for purposes of CWA enforcement. 2015 General Permit, Finding A.6.

Pursuant to Section 309(d) of the Act (33 U.S.C. § 1319(d)) and the Adjustment of Civil Monetary Penalties for Inflation (40 C.F.R. § 19.4), each separate violation of the CWA occurring before November 2, 2015 commencing five years prior to the date of this Notice of Violation and Intent to File Suit subjects 7/11 Materials to a penalty of up to \$37,500 per day; violations occurring after November 2, 2015 and assessed on or after August 1, 2016 subjects 7/11 Materials to a penalty of up to \$51,570 per day. In addition to civil penalties, SJR/WRC & POW will seek injunctive relief preventing further violations of the Act pursuant to Sections 505(a) and (d) of the Act (33 U.S.C. §§ 1365(a), (d)) and such other relief as permitted by law. Lastly, Section 505(d) of the Act (33 U.S.C. § 1365(d)) permits prevailing parties to recover costs and fees, including attorneys' fees.

The CWA requires that sixty (60) days prior to the initiation of a citizen-enforcement action under Section 505(a) of the Act (33 U.S.C. § 1365(a)), a citizen enforcer must give notice of its intent to file suit. Notice must be given to the alleged violator, the U.S. Environmental Protection Agency, and the Chief Administrative Officer of the water pollution control agency for the State in which the violations occur. See 40 C.F.R. 135.2.

As required by the Act, this letter provides statutory notice of the violations that have occurred, and continue to occur, at the Facility. 40 C.F.R. § 135.3(a). At the expiration of sixty (60) days from the date of this letter, SJR/WRC & POW intends to file suit under Section 505(a) of the Act (33 U.S.C. § 1365(a)) in federal court against 7/11 Materials for violations of the Act and the General Permit.

¹ 7/11 Materials submitted a Notice of Intent to comply with the 2015 General Permit for the Facility on or about May 6, 2015.

I. Background

A. The Clean Water Act

Congress enacted the CWA in 1972 in order to “restore and maintain the chemical, physical, and biological integrity of the Nation’s waters.” 33 U.S.C. § 1251. The Act prohibits the discharge of pollutants into United States waters except as authorized by the statute. 33 U.S.C. § 1311; *San Francisco Baykeeper, Inc. v. Tosco Corp.*, 309 F.3d 1153, 1156 (9th Cir. 2002). The Act is administered largely through the NPDES permit program. 33 U.S.C. § 1342. In 1987, the Act was amended to establish a framework for regulating storm water discharges through the NPDES system. Water Quality Act of 1987, Pub. L. 100-4, § 405, 101 Stat. 7, 69 (1987) (codified at 33 U.S.C. § 1342(p)); *see also Env’tl. Def. Ctr., Inc. v. EPA*, 344 F.3d 832, 840-41 (9th Cir. 2003) (describing the problem of storm water runoff and summarizing the Clean Water Act’s permitting scheme). The discharge of pollutants without an NPDES permit, or in violation of a NPDES permit, is illegal. *Ecological Rights Found. v. Pac. Lumber Co.*, 230 F.3d 1141, 1145 (9th Cir. 2000).

Much of the responsibility for administering the NPDES permitting system has been delegated to the states. *See* 33 U.S.C. § 1342(b); *see also* Cal. Water Code § 13370 (expressing California’s intent to implement its own NPDES permit program). The CWA authorizes states with approved NPDES permit programs to regulate industrial storm water discharges through individual permits issued to dischargers, as well as through the issuance of a single, statewide general permit applicable to all industrial storm water dischargers. 33 U.S.C. § 1342(b). Pursuant to Section 402 of the Act, the Administrator of EPA has authorized California’s State Board Water Resource Control Board (“State Board”) to issue individual and general NPDES permits in California. 33 U.S.C. § 1342. The State Board coordinates with the Central Valley Regional Water Quality Control Board (“Regional Board”), which has shared jurisdiction over the Facility for state and federal water pollution control efforts.

B. California’s General Permit for Storm Water Discharges Associated with Industrial Activities

Between 1997 and June 30, 2015, the General Permit in effect was Order No. 97-03-DWQ, which SJR/WRC & POW refers to as the “1997 General Permit.” On July 1, 2015, pursuant to Order No. 2015-0057-DWQ, the General Permit was reissued, including many of the same fundamental terms as the prior permit. For the purposes of this notice letter, SJR/WRC & POW refers to the reissued permit as the “2015 General Permit.” The 2015 General Permit rescinded in whole the 1997 General Permit, except for the expired permit’s requirement that annual reports be submitted by July 1, 2015, and for the purposes of CWA enforcement. 2015 General Permit, Finding A.6.

Facilities discharging, or having the potential to discharge, storm water associated with industrial activities that have not obtained an individual NPDES permit must apply for coverage under the General Permit by filing a Notice of Intent to Comply ("NOI"). 1997 General Permit, Provision E.1; 2015 General Permit, Standard Condition XXI.A. Facilities must file their NOIs before the initiation of industrial operations. *Id.*

Facilities must strictly comply with all of the terms and conditions of the General Permit. A violation of the General Permit is a violation of the CWA. The General Permit contains three primary and interrelated categories of requirements: (1) discharge prohibitions, receiving water limitations and effluent limitations; (2) Storm Water Pollution Prevention Plan ("SWPPP") requirements; and (3) self-monitoring and reporting requirements. Beginning under the 2015 General Permit Facilities must submit Exceedance Response Action Plans ("ERA Report") to the State Board outlining effective plans to reduce pollutants if a Facility reports a pollutant above the Numeric Action Level ("NAL"). An annual NAL exceedance occurs when the average of all the analytical results for a parameter from samples taken within a reporting year exceeds the annual NAL value for that parameter. An instantaneous maximum NAL exceedance occurs when two (2) or more analytical results from samples taken for any single parameter within a reporting year exceed the instantaneous maximum NAL value or are outside of the instantaneous maximum NAL range for pH. 2015 General Permit XII.A.

C. 7/11 Materials' Industrial Facility

The 7/11 Materials Facility is located at 2714 Stagecoach Road in Stockton, San Joaquin County, California. The Facility's general purpose consists of cement and concrete batching, mixing, delivery of product, and concrete/aggregate reuse and recycling. The Facility operates Monday through Friday 6:00AM to 5:00PM, and operations continue Saturday as demand requires. Industrial activities occur consistently during operating hours.

According to The Facility's Notice of Intent to Comply with the General Permit² ("NOI"), and the Facility's Storm Water Pollution Prevention Plan ("SWPPP") 7/11 Materials operates under Standard Industrial Classification ("SIC") Code 3273 – Ready-Mixed Concrete used for establishments primarily engaged in manufacturing of cement, aggregate, concrete, or concrete products.

Under SIC Code 3273 the General Permit requires 7/11 Materials to analyze storm water samples for Total Suspended Solids ("TSS"), pH, Oil and Grease ("O&G") and Iron ("Fe"). Facilities must also sample and analyze for additional parameters identified on a facility specific basis to reflect pollutant a source assessment, due to receiving water impairments, or as required by the Regional Board. 1997 General Permit, Section B.5.c.i; 2015 General Permit, Section XI.B.6.

² 7/11 Materials submitted their NOI to Comply with the 2015 General Permit on or about May 6, 2015.

Industrial operations and activities at the Facility consist of preparing and loading of coarse aggregate, fine aggregate, fly ash, portland cement, sand, various other pollutant carrying materials and mixtures to supplement the process, and pumping water into trucks for mixing and delivery of wet cement/concrete to construction sites. Materials are frequently delivered to the Facility in bulk; conveyor belts and hoppers are used to transfer materials to storage units and piles; material is then loaded into trucks for mixing and delivery. Motor oil, waste oil, and hydraulic oil are also used and present in heavy quantities at the Facility. All the industrial activities, industrial areas, and industrial materials referenced herein impact and potentially impact storm water and non-storm water runoff and discharges at the Facility.

Industrial activities at the Facility occur in the following industrial areas: the ready mix batch plant, truck washing facilities, an administrative/truck maintenance building, a concrete recycling system, parking lot, aggregate storage area, and a concrete spoils area. All 5.5 acres of the site host industrial activities are directly exposed to precipitation and stormwater runoff. Pursuant to the SWPPP, there are no historic sources of contamination at the Facility.

Pollutant sources on site at the Facility include but are not limited to, sediment buildup in the storm water drainage systems, and any filtration systems, dust from daily operations throughout the site, fine particles from daily operations collecting on roofs, other surfaces, and deposited throughout the Facility and off the Facility through aerial deposition. Blowers are operated that blow dust, fine particles and debris from the Facility to other onsite areas and offsite where it may later contact storm water.

The Facility is divided into four drainage areas with drainage inlets associated with each respective drainage areas, and discharge locations. The site grade is mostly level, with sloping to the west-northwest. The facility is bordered by Duck Creek to the north, undeveloped industrial parcels on the east and west, and developed industrial sites to the south. Apart from Duck Creek, the adjacent sites are mostly flat and according to the SWPPP, there is very little storm water run-on from the adjacent parcels. Storm water is alleged to be directed to storm drain inlets, with a portion retained, much of which is later discharged. Drainage area 1 includes much of the industrial operations at the Facility and includes ready mix batch plant, concrete recycling area, truck wash, parking lot, aggregate storage, and the office section of the main building which includes the truck maintenance area. Drainage area 2 includes truck wash portion of the main building. Drainage areas 3 and 4 consist mostly of stretches of the Facility driveway.

Pursuant to the SWPPP, sampling occurs at all locations of storm water discharge at the Facility, and are identified in the SWPPP as "manholes in the driveway" which are claimed to collect runoff from each of the drainage areas. However, not all flow patterns identified in the Facility site map in the SWPPP appear to flow towards the

manholes. Sampling from each discharge point at the four manholes have exceeded pollutant level benchmarks as discussed below. It is unknown if contained storm water that is later discharged offsite to the water bodies described below is sampled and analyzed for pollutants, but publicly available sampling records suggests that it is not analyzed.

7/11 Materials discharges storm water from its 5.5-acre industrial site into storm drains operated under the City of Stockton's Municipal Separate Storm Sewer System ("MS4"), which discharge into the San Joaquin River pursuant to the NOI, and ultimately the Delta. The SWPPP notes that discharges also enter Duck Creek, adjacent to the Facility, a tributary to San Joaquin River which is listed for the following water quality impairments on the most recent Clean Water Act Section 303(d)-list: Chlorpyrifos, Escherichia coli (E. coli) and Mercury. Stretches of the San Joaquin River have numerous, differing impairments listed on the 303(d)-impairment list. The Sacramento San Joaquin Delta, hydrologically connected to the receiving waters discussed herein is also listed on the 303(d)-impairment list for Chlordane, DDT, Dieldrin, Dioxin compounds, Furan Compounds, Mercury, PCBs and Selenium. Duck Creek, the San Joaquin River and the Sacramento San Joaquin Delta are waters of the United States within the meaning of the CWA.

Heavy use of water at the Facility for equipment and vehicle washing, dust control, and in the industrial processes increases the likelihood of polluted non-storm water discharges. Thus, SJR/WRC & POW also puts 7/11 Materials on notice of allegations of unauthorized and polluted non-storm water discharges from the Facility entering the Duck Creek, the San Joaquin River and the Sacramento San Joaquin Delta, in violation of the General Permit.

II. 7/11 Materials' Violations of the Act and the General Permit

Based on its review of available public documents, SJR/WRC & POW is informed and believes that 7/11 Materials is in ongoing violation of both the substantive and procedural requirements of the CWA, and the General Permit. These violations are ongoing and continuous. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the CWA, 7/11 Materials is subject to penalties for violations of the Act since January 19, 2013. SJR/WRC & POW expects to identify additional storm water pollutant discharges in violation of the CWA through further investigation of the Facility.

A. 7/11 Materials Discharges Storm Water Containing Pollutants in Violation of the General Permit's Discharge Prohibitions, Receiving Water Limitations, and Effluent Limitations

7/11 Materials' storm water sampling results provide conclusive evidence of its

failure to comply with the General Permit's discharge prohibitions, receiving water limitations and effluent limitations. Self-monitoring reports under the General Permit are deemed "conclusive evidence of an exceedance of a permit limitation." *Sierra Club v. Union Oil*, 813 F.2d 1480, 1493 (9th Cir. 1988).

1. Applicable Water Quality Standards

The General Permit requires that storm water discharges and authorized non-storm water discharges shall not cause or threaten to cause pollution, contamination, or nuisance. 1997 General Permit, Discharge Prohibition A.2; 2015 General Permit, Discharge Prohibition III.C. The General Permit also prohibits discharges that violate any discharge prohibition contained in the applicable Regional Board's Basin Plan or statewide water quality control plans and policies. 1997 General Permit, Receiving Water Limitation C.2; 2015 General Permit, Discharge Prohibition III.D. Furthermore, storm water discharges and authorized non-storm water discharges shall not adversely impact human health or the environment, and shall not cause or contribute to a violation of any water quality standards in any affected receiving water. 1997 General Permit, Receiving Water Limitations C.1, C.2; 2015 General Permit, Receiving Water Limitations VI.A, VI.B.

Dischargers are also required to prepare and submit documentation to the Regional Board upon determination that storm water discharges are in violation of the General Permit's Receiving Water Limitations. 1997 General Permit, p. VII; 2015 General Permit, Special Condition XX.B. The documentation must describe changes the discharger will make to its current storm water best management practices ("BMPs") in order to prevent or reduce any pollutant in its storm water discharges that is causing or contributing to an exceedance of water quality standards. *Id.*

The *Water Quality Control Plan for the Central Valley Region* ("Basin Plan") also sets forth water quality standards and prohibitions applicable to 7/11 Materials' storm water discharges. The Basin Plan identifies existing and potential Beneficial Uses for the San Joaquin River and the San Joaquin Sacramento Delta. The Basin Plan lists numerous existing and potential Beneficial Uses for stretches of the San Joaquin River, and water bodies flowing to the San Joaquin River. The Basin Plan also notes that Beneficial Uses vary throughout the San Joaquin Sacramento Delta and are evaluated on a case-by-case basis. (Basin Plan, Table 2-1.)

The Basin Plan also includes a narrative toxicity standard which states that "(a)ll waters shall be maintained free of toxic substances in concentrations that produce detrimental physiological responses in human, plant, animal, or aquatic life." For the San Joaquin Sacramento Delta, the Basin Plan establishes standard of 0.3 mg/L for Iron.

2. Applicable Effluent Limitations

Dischargers are required to reduce or prevent pollutants in their storm water discharges through implementation of best available technology economically achievable ("BAT") for toxic and nonconventional pollutants and best conventional pollutant control technology ("BCT") for conventional pollutants. 1997 General Permit, Effluent Limitation B.3; 2015 General Permit, Effluent Limitation V.A. Conventional pollutants include Total Suspended Solids, Oil & Grease, pH, Biochemical Oxygen Demand and Fecal Coliform. 40 C.F.R. § 401.16. All other pollutants are either toxic or nonconventional. 40 C.F.R. §§ 401.15-16.

Under the General Permit, benchmark levels established by the EPA ("EPA benchmarks") serve as guidelines for determining whether a facility discharging industrial storm water has implemented the requisite BAT and BCT. *Santa Monica Baykeeper v. Kramer Metals*, 619 F.Supp.2d 914, 920, 923 (C.D. Cal 2009); 1997 General Permit, Effluent Limitations B.5-6; 2015 General Permit, Exceedance Response Action XII.A.

The following EPA benchmarks have been established for pollutants discharged by 7/11 Materials: Total Suspended Solids – 100 mg/L; Oil & Grease – 15 mg/L; pH – 6-9 s.u., and Iron – 1 mg/L. The Basin Plan's Water Quality Standards for Central Valley require a narrower pH range of 6.5 – 8.5 pH units (Basin Plan).

3. 7/11 Materials' Storm Water Sample Results

Except as provided in Section XI.C.4 of the 2015 General Permit, samples shall be collected from each drainage area at all discharge locations. The samples must be:

- a. Representative of storm water associated with industrial activities and any commingled authorized non-storm water discharges; or, b. Associated with the discharge of contained storm water.

The following discharges of pollutants from the Facility have violated the discharge prohibitions, receiving water limitations, and effluent limitations of the Permit.

a. Discharges of Storm Water Containing Total Suspended Solids (TSS) at Concentrations in Excess of Applicable EPA Benchmark Value

Date	Discharge Point	Parameter	Concentration in Discharge (mg/L)	EPA Benchmark Value (mg/L)
1/20/2013	TBD*	TSS	162	100
4/7/2015	Northwest Outfall	TSS	104	100
12/3/2015	Manhole North of Office Along Driveway	TSS	153	100
3/11/2016	Manhole North of Office Along Driveway	TSS	108	100
12/15/2016	Manhole 1	TSS	191	100
1/18/2017	Manhole 2	TSS	147	100
1/18/2017	Manhole 3	TSS	142	100
1/18/2017	Manhole 4	TSS	104	100
1/18/2017	Manhole 1	TSS	164	100
3/21/2017	Manhole 4	TSS	140	100
3/21/2017	Manhole 3	TSS	220	100

b. Discharges of Storm Water Containing Iron (Fe) at Concentrations in Excess of Applicable EPA Benchmark Value

Date	Discharge Point	Parameter	Concentration in Discharge (mg/L)	EPA Benchmark Value (mg/L)
3/21/2017	Manhole 3	Fe	16.7	1.0
3/26/2014	TBD*	Fe	1.26	1.0
11/20/2013	TBD*	Fe	5.76	1.0
4/7/2015	Northwest Outfall	Fe	3.7	1.0
10/31/2014	Northwest Outfall	Fe	1.72	1.0
12/3/2015	Manhole North of Office Along Driveway	Fe	3.25	1.0
3/11/2016	Manhole North of Office Along Driveway	Fe	6.53	1.0
12/15/2016	Manhole 2	Fe	1.41	1.0
12/15/2016	Manhole 3	Fe	2.7	1.0
12/15/2016	Manhole 4	Fe	1.44	1.0
12/10/2016	Manhole 1	Fe	5.4	1.0
12/15/2016	Manhole 1	Fe	13.1	1.0
1/18/2017	Manhole 2	Fe	5.43	1.0

* Discharge Point information was unavailable from the State Board's Storm Water Multiple Application and Report Tracking System ("SMARTS") and will be discovered via Public Records Act request or through discovery.

Date	Discharge Point	Parameter	Concentration in Discharge (mg/L)	EPA Benchmark Value (mg/L)
1/18/2017	Manhole 3	Fe	9.52	1.0
1/18/2017	Manhole 4	Fe	6.57	1.0
1/18/2017	Manhole 1	Fe	7.72	1.0
3/21/2017	Manhole 1	Fe	6.05	1.0
3/21/2017	Manhole 2	Fe	6.05	1.0
3/21/2017	Manhole 4	Fe	10.2	1.0
3/21/2017	Manhole 3	Fe	16.7	1.0

c. Discharges of Storm Water Containing pH Levels outside the allowable Basin Plan Range/Values

Date	Discharge Point	Parameter	Result (s.u.)	Basin Plan Limits (s.u.)
3/26/2014	TBD*	pH	9.6	6.5 – 8.5
11/20/2013	TBD*	pH	9.7	6.5 – 8.5
4/7/2015	Northwest Outfall	pH	9.1	6.5 – 8.5
10/31/2014	Northwest Outfall	pH	9.3	6.5 – 8.5
12/3/2015	Manhole North of Office Along Driveway	pH	9.37	6.5 – 8.5
3/11/2016	Manhole North of Office Along Driveway	pH	8.77	6.5 – 8.5
12/15/2016	Manhole 2	pH	8.58	6.5 – 8.5
12/10/2016	Manhole 1	pH	8.96	6.5 – 8.5
12/10/2016	Manhole 2	pH	8.65	6.5 – 8.5
1/18/2017	Manhole 2	pH	9.55	6.5 – 8.5
1/18/2017	Manhole 3	pH	9.02	6.5 – 8.5
1/18/2017	Manhole 4	pH	8.88	6.5 – 8.5
1/18/2017	Manhole 1	pH	9.08	6.5 – 8.5
3/21/2017	Manhole 2	pH	9	6.5 – 8.5
3/21/2017	Manhole 1	pH	9	6.5 – 8.5

g. 7/11 Materials' Sample Results Are Evidence of Violations of the General Permit

7/11 Materials' sample results demonstrate violations of the General Permit's discharge prohibitions, receiving water limitations, and effluent limitations set forth above. SJRWRC & POW is informed and believes that the 7/11 Materials has known that its storm water contains pollutants at levels exceeding General Permit standards since at least January 19, 2013.

SJRWRC & POW alleges that such violations occur each time storm water or non-storm water discharges from the Facility. Attachment A hereto, sets forth the

specific rain dates on which SJR/WRC & POW alleges that 7/11 Materials has discharged storm water containing impermissible levels of TSS, Iron, and pH affecting substances in violation of the General Permit. 1997 General Permit, Discharge Prohibition A.2, Receiving Water Limitations C.1 and C.2; 2015 General Permit, Discharge Prohibitions III.C and III.D, Receiving Water Limitations VI.A, VI.B.

Because 7/11 Materials recorded averages of testing above Numeric Action Levels ("NAL"), which are equivalent to the standard EPA Benchmark Limits, for Iron and in both the 2015-16 and 2016-2017 reporting years³, the Facility is currently at ERA Level 2 for that parameter. Total Suspended Solids were reported above the Annual NAL in the 2015-2016 reporting year putting the Facility into ERA Level 1 for that constituent in the 2015-2016 reporting year. The Facility did not enter ERA Level 2 for TSS in the 2016-2017 reporting year, though individual TSS EPA Benchmark exceedances continued including a result of 220 mg/L in March of 2017, a magnitude over two times the EPA Benchmark. The Facility also reported one pH range exceedance, outside the Instantaneous Maximum NAL range of 6.0 to 9.0 s.u. (9.37 s.u.) in the 2015-2016 reporting year. During the 2016-2017 reporting year the Facility reported three additional Instantaneous Maximum NAL range exceedances of 9.55 s.u., 9.02 s.u., and 9.08 s.u., and entered ERA Level 1 for pH.

4. 7/11 Materials Has Failed to Implement BAT and BCT

Dischargers must implement adequate BMPs that fulfill the BAT/BCT requirements of the CWA and the General Permit to reduce or prevent discharges of pollutants in their storm water discharges. 1997 General Permit, Effluent Limitation B.3; 2015 General Permit, Effluent Limitation V.A. To meet the BAT/BCT standard, dischargers must implement minimum BMPs and any advanced BMPs set forth in the General Permit's SWPPP Requirements provisions where necessary to reduce or prevent pollutants in discharges. See 1997 General Permit, Sections A.8.a-b; 2015 General Permit, Sections X.H.1-2. Sampling Orders of magnitude in excess of benchmark levels, as reported by 7/11 Materials, are evidence that 7/11 Materials does not have BMPs that achieve BAT/BCT (*Santa Monica Baykeeper v. Kramer Metals, Inc.*, 619 F. Supp. 2d 914, 925 (C.D. Cal., 2009).)

7/11 Materials has failed to implement the minimum BMPs required by the General Permit, including: sufficient good housekeeping requirements; preventive maintenance requirements; aerial deposition control; material handling and waste management requirements; erosion and sediment controls; employee training and quality assurance; and record keeping. 1997 General Permit, Sections A.8.a(i-x); 2015 General Permit, Sections X.H.1(a-g).

³ A reporting year under the General Permit runs from July 1 to June 30.

7/11 Materials has further failed to implement advanced BMPs necessary to reduce or prevent discharges of pollutants in its storm water sufficient to meet the BAT/BCT standards, including: exposure minimization BMPs; containment and discharge reduction BMPs; treatment control BMPs; or other advanced BMPs necessary to comply with the General Permit's effluent limitations. 1997 General Permit, Section A.8.b; 2015 General Permit, Sections X.H.2.

Each day the Owners/Operators have failed to develop and implement BAT and BCT at the Facility in violation of the General Permit is a separate and distinct violation of Section 301(a) of the CWA (33 U.S.C. § 1311(a)). The violations described above were at all times in violation of Section A of the 1997 General Permit, and Section X of the 2015 General Permit. Accordingly, the Owners/Operators have been in violation of the BAT and BCT requirements at the Facility every day since at least January 19, 2013.

5. 7/11 Materials Has Failed to Develop and Implement an Adequate Storm Water Pollution Plan

The General Permit requires dischargers to develop and implement a site-specific SWPPP. 1997 General Permit, Section A.1; 2015 General Permit, Section X.A. The SWPPP must include, among other elements: (1) the facility name and contact information; (2) a site map; (3) a list of industrial materials; (4) a description of potential pollution sources; (5) an assessment of potential pollutant sources; (6) minimum BMPs; (7) advanced BMPs, if applicable; (8) a monitoring implementation plan; (9) annual comprehensive facility compliance evaluation; and (10) the date that the SWPPP was initially prepared and the date of each SWPPP amendment, if applicable. *See id.*

Dischargers must revise their SWPPP whenever necessary and certify and submit via the State Board's Storm Water Multiple Application and Report Tracking System ("SMARTS") their SWPPP within 30 days whenever the SWPPP contains significant revisions(s); and, certify and submit via SMARTS for any non-significant revisions not more than once every three (3) months in the reporting year. 2015 General Permit, Section X.B; see also 1997 General permit, Section A.

SJR/WRC & POW's investigation indicates that 7/11 Materials has been operating with an inadequately developed or implemented SWPPP in violation of General Permit requirements. 7/11 Materials has failed to evaluate the effectiveness of its BMPs and to revise its SWPPP as necessary, resulting in the Facility's numerous effluent limitation violations.

Each day the Owners/Operators failed to develop and implement an adequate SWPPP is a violation of the General Permit. The SWPPP violations described above were at all times in violation of Section A of the 1997 General Permit, and Section X of

the 2015 General Permit. The Owners/Operators have been in violation of these requirements at the Facility every day since at least January 19, 2013.

6. 7/11 Materials has Failed to Develop, Implement, and/or Revise an Adequate Monitoring and Reporting Program

Section B(1) and Provision E(3) of the 1997 General Permit required Facility Owners/Operators to develop and implement an adequate Monitoring and Reporting Program. Similarly, Section X.I of the 2015 General Permit requires Facility Owners/Operators to develop and implement a Monitoring Implementation Plan ("MIP"). The primary objective of the monitoring and reporting requirements is to detect and measure the concentrations of pollutants in a facility's discharge to ensure compliance with the General Permit's Discharge Prohibitions, Effluent Limitations, and Receiving Water Limitations. See 1997 General Permit, Section B(2); 2015 IGP Fact Sheet, Section II.J(1). Monitoring undertaken must therefore determine whether pollutants are being discharged, and whether response actions are necessary, and must evaluate the effectiveness of BMPs. See General Permit, Section I.J(56).

Sections B(5) and B(7) of the 1997 General Permit, and Section XI.A of the 2015 General Permit, require dischargers to visually observe and collect samples of storm water from all locations where storm water is discharged. Under XI.B of the 2015 General Permit, the Facility Owners/Operators are required to collect at least two (2) samples from each discharge location at their Facility during the Wet Season. Storm water samples must be analyzed for TSS, pH, O&G, and other pollutants that are likely to be present in the Facility's discharges in significant quantities. See 2015 General Permit, Section XI.B(6).

The Facility Owners/Operators have been conducting operations at the Facility with an inadequately developed, implemented, and/or revised MIP. Upon information and belief, the Facility Owners/Operators have not collected samples from all discharge point each time they have undertaken sampling at the Facility. Based on information available to SJR/WRC & POW, the Facility Owners/Operators have failed to properly collect samples from other discharge locations. And in the 2015-2016 reporting year, the first year that four annual sampling events were required under the 2105 General Permit, the Owners/Operators only sampled two rain events, at a single discharge point. This despite thirty-six rain events of .1 inch or more recorded nearby in that reporting year. See Exhibit A. Evidence also exists from publicly available materials that the Owners/Operators fail to sample from each designated discharge point, and other locations discharging storm water, during sampling events conducted at the Facility. During the 2015-2016 reporting year, only a single discharge point was sampled, the same discharge point during each sampling event. Similarly, in the 2014-2015 reporting year, only a single discharge point was sampled, the same discharge point during each sampling event.

The Facility Owners'/Operators' failure to conduct sampling and monitoring as required by the General Permit demonstrates that it has failed to develop, implement, and/or revise an MIP that complies with the requirements of Section B and Provision E(3) of the 1997 General Permit and Section XI of the 2015 General Permit. Every day that the Facility Owners/Operators conduct operations in violation of the specific monitoring requirements of the 1997 General Permit or the 2015 General Permit, or with an inadequately developed and/or implemented MIP, is a separate and distinct violation of the 1997 General Permit or the 2015 General Permit, and the Clean Water Act. The Facility Owners/Operators have been in daily and continuous violation of the General Permit's MIP requirements every day since at least January 19, 2013. These violations are ongoing, and SJR/WRC & POW will include additional violations when information becomes available, including specifically continuing violations of the 2015 General Permit monitoring requirements (see 2015 General Permit, Section XI.). The Facility Owners/Operators are subject to civil penalties for all violations of the Clean Water Act occurring since January 19, 2013.

7. Failure to Comply with the General Permit's Reporting Requirements

Section B(14) of the 1997 General Permit requires a permittee to submit an Annual Report to the Regional Board by July 1 of each year. Section B(14) requires that the Annual Report include a summary of visual observations and sampling results, an evaluation of the visual observation and sampling results, the laboratory reports of sample analysis, the annual comprehensive site compliance evaluation report, an explanation of why a permittee did not implement any activities required, and other information specified in Section B(13). The 2015 General Permit includes the same annual reporting requirement. See 2015 General Permit, Section XVI.

The Facility Owners/Operators have also submitted incomplete Annual Reports. For instance, the Facility operators must report any noncompliance with the General Permit at the time that the Annual Report is submitted, including 1) a description of the noncompliance and its cause, 2) the period of noncompliance, 3) if the noncompliance has not been corrected, the anticipated time it is expected to continue, and 4) steps taken or planned to reduce and prevent recurrence of the noncompliance. 1997 General Permit, Section C(11)(d). The Facility Owners/Operators did not report their non-compliance as required. Further, 7/11 Materials failed to undertake sampling, and report results from, every discharge point at the Facility, as required by the General Permit.

Last, the General Permit requires a permittee whose discharges violate the General Permit Receiving Water Limitations to submit a written report identifying what additional BMPs will be implemented to achieve water quality standards, along with an implementation schedule. 1997 General Permit, Receiving Water Limitations C(3) and C(4). Information available to SJR/WRC & POW indicates that the Facility Owners/Operators failed to submit the reports required by Receiving Water Limitations '

C(3) and C(4) of the 1997 General Permit. As such, the Owners/Operators are in daily violation of this requirement of the General Permit.

Information available to SJR/WRC & POW indicates that the Facility Owners/Operators have submitted incomplete and/or incorrect Annual Reports that fail to comply with the General Permit. Information available to SJR/WRC & POW also suggests that ERA Reports submitted by the Facility are insufficient with proposed and implemented BMPs proving ineffective in reducing pollutants to levels compliant with the CWA. As such, the Owners/Operators are in daily violation of the CWA and General Permit. Every day the Facility Owners/Operators conduct operations at the Facility without reporting as required by the General Permit is a separate and distinct violation of the General Permit and Section 301(a) of the Clean Water Act, 33 U.S.C. §1311(a). The Facility Owners/Operators have been in daily and continuous violation of the General Permit's reporting requirements every day since at least January 19, 2013. These violations are ongoing, and SJR/WRC & POW will include additional violations when information becomes available, including specifically violations of the 2015 General Permit reporting requirements (see 2015 General Permit, Section XVI.). The Facility Owners/Operators are subject to civil penalties for all violations of the Clean Water Act occurring since January 19, 2013.

III. Persons Responsible for the Violations

SJR/WRC & POW puts 7/11 Materials on notice that it is the entity responsible for the violations described above. If additional persons are subsequently identified as also being responsible for the violations set forth above, SJR/WRC & POW puts 7/11 Materials on formal notice that it intends to include those persons in this action.

IV. Name and Address of Noticing Party

The name, mailing address, and telephone number of the noticing party is as follows:

Lydia Miller, President
San Joaquin Raptor/Wildlife Rescue Center
P.O. Box 778 Merced, CA 95341
209-723-9283
sjrrc@sbcglobal.net

V. Counsel

SJR/WRC & POW has retained legal counsel to represent it in this matter.
Please direct all communications to:

Anthony M. Barnes
Aqua Terra Aeris (ATA) Law Group
828 San Pablo Ave, Ste 115B
Albany, CA 94706
(917) 371-8293
amb@atalawgroup.com

VI. Conclusion

SJR/WRC & POW believes this Notice of Violations and Intent to File Suit sufficiently states grounds for filing suit. We intend to file a citizen suit under Section 505(a) of the CWA against 7/11 Materials and its agents for the above-referenced violations upon the expiration of the 60-day notice period. If you wish to pursue remedies in the absence of litigation, we suggest that you initiate those discussions within the next twenty (20) days so that they may be completed before the end of the 60-day notice period. We do not intend to delay the filing of a complaint in federal court if discussions are continuing when that period ends.

Sincerely,



Anthony M. Barnes
ATA Law Group
Counsel for San Joaquin Raptor/Wildlife
Rescue Center and Protect Our Water

SERVICE LIST

VIA CERTIFIED MAIL

Scott Pruitt, Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., N.W.
Washington, D.C. 20460

Alexis Strauss, Acting Regional
Administrator
U.S. Environmental Protection Agency
Region IX
75 Hawthorne Street
San Francisco, CA 94105

Eileen Sobeck, Executive Director
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812

Pamela C. Creedon, Executive Officer
Central Valley Regional Water Quality
Control Board
11020 Sun Center Drive, #200
Rancho Cordova, CA 95670-6114

Jeff Sessions
U.S. Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530-0001

EXHIBIT A

Rain Data: US1CASJ0006 STOCKTON 3.3 SE, CA US

1-19-2013 - 1-13-2018

Days with Precipitation over .1

Date	Precipitation (Inches)
2/20/2013	0.16
3/6/2013	0.22
3/20/2013	0.19
3/31/2013	0.42
4/1/2013	0.32
4/4/2013	0.29
4/5/2013	0.11
6/25/2013	0.13
9/22/2013	0.36
11/20/2013	0.52
11/21/2013	0.45
12/7/2013	0.48
1/30/2014	0.1
2/3/2014	0.15
2/6/2014	0.3
2/8/2014	0.43
2/9/2014	0.63
2/10/2014	0.19
2/27/2014	0.47
2/28/2014	0.71
2/20/2013	0.16
3/6/2013	0.22
3/20/2013	0.19
3/31/2013	0.42
4/1/2013	0.32
4/4/2013	0.29
4/5/2013	0.11
6/25/2013	0.13
9/22/2013	0.36
11/20/2013	0.52
11/21/2013	0.45
12/7/2013	0.48
1/30/2014	0.1
2/3/2014	0.15
2/6/2014	0.3
2/8/2014	0.43
2/9/2014	0.63
2/10/2014	0.19
2/27/2014	0.47
2/28/2014	0.71
3/1/2014	1.25
3/3/2014	0.19
3/4/2014	0.3
3/6/2014	0.23

Date	Precipitation (Inches)
3/6/2014	0.23
3/27/2014	0.4
3/30/2014	0.67
4/1/2014	0.14
4/2/2014	0.4
4/25/2014	0.14
4/26/2014	0.82
9/26/2014	0.42
11/1/2014	0.48
11/13/2014	0.33
11/20/2014	0.11
11/21/2014	0.13
11/23/2014	0.25
12/1/2014	0.43
12/2/2014	0.45
12/3/2014	0.9
12/4/2014	0.17
12/12/2014	2.66
12/15/2014	0.52
12/16/2014	0.36
12/17/2014	0.56
12/18/2014	0.1
12/20/2014	0.46
2/7/2015	0.55
2/8/2015	0.65
2/9/2015	0.39
3/12/2015	0.11
4/7/2015	0.23
4/8/2015	0.51
4/25/2015	0.76
6/11/2015	0.11
10/1/2015	0.27
11/2/2015	0.68
11/3/2015	0.34
11/9/2015	0.19
11/10/2015	0.23
11/15/2015	0.15
11/25/2015	0.2
12/4/2015	0.21
12/11/2015	0.57
12/14/2015	0.4
12/19/2015	0.22
12/22/2015	0.66
12/25/2015	0.3
12/28/2015	0.13
1/5/2016	0.91
1/6/2016	0.57
1/7/2016	0.1
1/15/2016	0.11
1/16/2016	0.26

Date	Precipitation (Inches)
1/18/2016	1.55
1/19/2016	0.13
1/20/2016	0.66
1/23/2016	0.62
1/30/2016	0.32
2/18/2016	0.55
3/5/2016	0.32
3/6/2016	1.28
3/7/2016	1.02
3/12/2016	0.65
3/13/2016	0.14
3/14/2016	0.74
4/9/2016	0.28
4/10/2016	1.92
4/23/2016	0.25
5/7/2016	0.32
5/22/2016	0.12
10/15/2016	0.58
10/17/2016	1.04
10/28/2016	0.71
10/29/2016	0.31
10/31/2016	0.27
11/20/2016	0.5
11/21/2016	0.39
11/23/2016	0.1
11/27/2016	0.65
12/8/2016	0.3
12/10/2016	0.1
12/11/2016	0.36
12/16/2016	0.7
12/24/2016	0.54
1/3/2017	0.19
1/4/2017	0.82
1/5/2017	0.55
1/7/2017	0.35
1/8/2017	0.77
1/9/2017	0.63
1/10/2017	0.57
1/11/2017	1.19
1/19/2017	0.85
1/20/2017	0.4
1/21/2017	0.52
1/22/2017	0.35
1/23/2017	0.63
1/24/2017	0.18
2/2/2017	0.2

Date	Precipitation (Inches)
2/4/2017	0.35
2/6/2017	0.27
2/7/2017	0.87
2/8/2017	0.42
2/10/2017	1.1
2/11/2017	0.12
2/17/2017	0.17
2/18/2017	0.1
2/20/2017	0.78
2/21/2017	0.81
2/22/2017	0.26
3/5/2017	0.22
3/21/2017	0.64
3/22/2017	0.83
3/23/2017	0.3
3/25/2017	0.16
4/7/2017	0.58
4/8/2017	0.38
4/9/2017	0.1
4/13/2017	0.24
4/17/2017	0.36
4/18/2017	0.36
10/20/2017	0.16
11/16/2017	0.73
11/27/2017	0.19
1/4/2018	0.36
1/6/2018	0.23
1/8/2018	0.24
1/9/2018	1.76
1/10/2018	0.29